

Senate File 2192 - Reprinted

SENATE FILE 2192
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 3181)

(As Amended and Passed by the Senate February 23, 2010)

A BILL FOR

1 An Act prohibiting the running of a transfer fee covenant with
2 the title to real property and including effective date and
3 applicability provisions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. **558.48 Transfer fee covenant —**
2 **prohibition.**

3 1. For purposes of this section, unless the context
4 otherwise requires:

5 *a. "Transfer"* means the sale, gift, conveyance, assignment,
6 inheritance, or other transfer of ownership interest in real
7 property located in this state.

8 *b. (1) "Transfer fee"* means a fee or charge payable upon
9 the transfer of an interest in real property, or payable for
10 the right to make or accept a transfer of an interest in real
11 property, regardless of whether the fee or charge is a fixed
12 amount or is determined as a percentage of the value of the
13 property, the purchase price, or other consideration given for
14 the transfer.

15 (2) *"Transfer fee"* does not include any of the following:

16 (a) Any consideration payable by the transferee to the
17 transferor for the interest in real property being transferred.

18 (b) Any commission payable to a licensed real estate broker
19 for the transfer of real property under an agreement between
20 the broker and the transferee or transferor.

21 (c) Any interest, charges, fees, or other amounts payable
22 by a borrower to a lender under a loan secured by a mortgage
23 against real property, including but not limited to any
24 fee payable to the lender for consenting to an assumption
25 of the loan or a transfer of the real property subject to
26 the mortgage, any fees or charges payable to the lender for
27 estoppel letters or certificates, and any other consideration
28 allowed by law and payable to the lender in connection with the
29 loan.

30 (d) Any rent, reimbursement, charge, fee, or other amount
31 payable by a lessee to a lessor under a lease, including but
32 not limited to any fee payable to the lessor for consenting
33 to an assignment, subletting, encumbrance, or transfer of the
34 lease.

35 (e) Any consideration payable to the holder of an option to

1 purchase an interest in real property or the holder of a right
2 of first refusal or first offer to purchase an interest in real
3 property for waiving, releasing, or not exercising the option
4 or right upon the transfer of the property to another person.

5 (f) Any tax, fee, charge, assessment, fine, or other amount
6 payable to or imposed by a governmental authority.

7 c. "*Transfer fee covenant*" means a declaration or covenant
8 purporting to affect real property which requires or purports
9 to require the payment of a transfer fee to the declarant or
10 other person specified in the covenant or declaration, or to
11 their successors or assigns, upon a subsequent transfer of an
12 interest in the real property.

13 2. A transfer fee covenant shall not run with the title to
14 real property and is not binding on or enforceable at law or in
15 equity against any subsequent owner, purchaser, or mortgagee
16 of any interest in the real property as an equitable servitude
17 or otherwise. Any lien purporting to secure the payment of
18 a transfer fee under a transfer fee covenant is void and
19 unenforceable.

20 Sec. 2. EFFECTIVE UPON ENACTMENT AND APPLICABILITY. This
21 Act, being deemed of immediate importance, takes effect upon
22 enactment and applies to any lien purporting to secure the
23 payment of a transfer fee under a transfer fee covenant which
24 is filed in this state on or after the effective date of this
25 Act.